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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/688,743	10/17/2000	Corrado Vezzani	Q61145	3690

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EXAMINER
MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
1764	5

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

mk-5

Office Action Summary	Application No.	Applicant(s)	
	09/688,743	VEZZANI, CORRADO	
	Examiner	Art Unit	
	Virginia Manoharan	1764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

The abstract of the disclosure is objected to because of the inclusion of legal phraseology often used in patent claims such as: "comprising" in lines 2 and 6. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: the term "vapour" numerously recited in the instant disclosure should be—vapor--- as the latter is the term normally used in the US.

Appropriate correction is required.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors e.g., typographical, grammar, idiomatic, syntax and etc. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claims 6-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. It is unclear what constitute the "predetermined temperature" within the context of the claimed invention as it is not specified in the claims.

b. There is no proper antecedent basis for support in the claims for the "continuous stream of concentrated liquid mixture" recited in claims 8-9. The claimed "discharging continuously a stream of a concentrated liquid mixture" recited in claim 6, last line, does not provide the antecedent basis because the

former recitation refers to a stream as opposed to the latter recitation presupposing a process step.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,146,493. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the instant claims is covered in the claims of the above patent and vice versa. The only difference seen is the "..concentration of liquid mixtures" in the instant claim as opposed to the "..concentration of solution" in the above patent. However, this difference does not constitute a patentable distinction inasmuch as it is more a product or material difference and not a process difference to which the claims are directed. The fluid—or ---material—in process is not the basis of patentability of a process claim. The "solutions" and liquid mixtures" are obvious variants. This is recognized by applicant noting e.g., page 1, third full paragraph of the specification.

Claims 6-9 are rejected under the judicially created doctrine of double patenting over claims 1-4 of U. S. Patent No. 6,146,493 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: interalia, the steps of: feeding a continuous stream of a material into a turbo-concentrator comprising a cylindrical tubular body which as an internal wall, a horizontal axis and which is equipped with an opening for introduction of the material and with an opening for the discharge of a final product, a heating jacket for heating said internal wall of said tubular body to a predetermined temperature, and a bladed rotor rotatably supported in said cylindrical tubular body where said bladed rotor is rotated at circumferential speeds variable from 30 to 50 m/s, centrifuging the material to form a dynamic and tubular thin layer in which the material is maintained in a state of turbulence by the blades of said bladed rotor, advancing said dynamic and tubular thin layer to said dynamic and tubular thin layer to said discharge opening of the turbo-concentrator, causing said dynamic and tubular thin layer to flow substantially in contact with said heated internal wall to the discharge opening, and opening, and discharging continuously a stream of a concentrated material..

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants' Disclosure of Admitted Prior Art in view of Bianchi et al (4,894,117).

Applicant admits that the steps of feeding a continuous stream of a liquid mixture into a turbo-concentrator comprising a cylindrical tubular body which has an internal wall, a horizontal axis and which is equipped with an opening for an introduction of the liquid mixture and with an opening for the discharge of a final product, a heating jacket for heating said internal wall of said tubular body to a predetermined temperature, and a bladed rotor rotatably supported in said cylindrical tubular body where said bladed rotor is rotated at circumferential speeds variable from 30 to 50 m/s, is known the art. See the paragraph bridging pages 4 and 5 of the specification.

The difference seen and as stipulated at page 6; lines 1-3 of the specification to be the difference with the prior art is in the batch or semi-batch techniques of the prior art.as opposed to the continuous operation of the present invention.

However, Bianchi et al teaches the alternativeness of the batch operation of the prior art and the claimed continuous operation using the same apparatus and achieving the same results. See e.g., col. 5, lines 5-56 of the Bianchi's reference.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

c. Monty, Pelzer, Baird et al and Bracken all are directed to a thin-film process.

d. Latinen discloses a horizontally axis mixer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Manoharan whose telephone number is (703) 308-3844. The examiner can normally be reached on Tuesday--Friday from 7:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (703) 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9311 for regular communications and (703) 308-0651 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

V. Manohara/dh
August 1, 2003

VIRGINIA MANOHARAN
PRIMARY EXAMINER
ART UNIT ~~1764~~ 1764

8/1/03